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## SETTLEMENT OF DISPUTES BETWEEN/AMONG STATES THROUGH “PEACEFUL” WAYS

### DEVLETLER ARASINDAKİ SORUNLARIN “BARİŞÇIL” YOLLARLA ÇÖZÜMLENMESİ

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#### ABSTRACT

States are regarded to be the main and dominant actors in international relations. The primary goal and objective of states are regarded to be maximizing their interests and minimizing their costs. In this case, there is the likelihood of the clash of interests of the states. This would inevitably result in a dispute between / among states. There are several ways of settling disputes and solving problems. One of the most consulted mechanisms in the past has been resorting to war between / among parties to the dispute. However, it is the peaceful settlement of disputes which is fore grounded and advised to the parties based on the bad consequences of war and the enhancement of international institutions to deal with conflicts among states. This paper, in this context, will focus on the settlement of disputes through peaceful ways which is encouraged and enhanced by international institutions such as the United Nations

#### Key Words

State, Dispute, Negotiation

#### ÖZET

Devletler, uluslararası ilişkiler disiplinin ana ve baskın aktörleri olarak ele alınmaktadır. Devletlerin birincil amacı, maliyetleri azaltırken kazanımlarını arttırmaktır. Bu durumda devletlerin çıkarlarının çatışması muhtemeldir. Bu durum kaçınılmaz olarak devletler arasında bir çatışma oluşturacaktır. Sorunları gidermenin ve problemleri çözmenin bir çok yolu vardır. Geçmişte en çok başvurulan yollardan bir tanesi soruna taraf olan devletlerin savaşa gitmeleri olmuştur. Ancak, savaşın olumsuz sonuçları ve devletler arasındaki sorunları çözen uluslararası kurumların yönlendirmeleriyle sorunların barışçıl yollarla çözümü öne çıkarılmakta ve önerilmektedir. Bu çalışma, bu bağlamda, Birleşmiş Milletler gibi uluslararası kurumlar tarafından teşvik edilen ve desteklenen bir unsura olan sorunların barışçıl yollarla çözümü üzerine yoğunlaşacaktır.

#### Anahtar Kelimeler

Devlet, Sorun, Müzakere

## 1. INTRODUCTION

Oxford advanced Learners' Dictionary defines dispute as 'an argument or disagreement between two people, groups or countries; discussion about a subject where there is disagreement'<sup>1</sup>. Likewise, dispute may also be defined as a specific disagreement arising from a certain matter of fact, law or policy where the interests and benefits of one part clashes or is likely to clash because of the actions of another party.

Dispute under consideration is regarded as an international dispute when the parties to the dispute are nation states which are sovereign in international arena, institutions, private individuals ie. subjects of the public international law. This study emphasizes the disputes or the likelihood of disputes between/ among sovereign nation states.

It should be noted that there is a basic fact in international relations which is the principle of the territorial integrity and the sovereignty of nation states which embodies the principle of non intervention to domestic jurisdictions and actions of governments acting on behalf of their states.<sup>2</sup> It should also be noted that when the interests of other parties are affected by the actions of a particular party, it is inevitable for international relations mechanisms to activate and settle the dispute for the restoration and the continuation of international peace and stability.

It is a clear fact that there are various ways of settling disputes. Resorting to force is one of them and may be the most widely used in the past. But settling disputes by peaceful means is the way which is mostly fore grounded and encouraged. But it should not be forgotten that the basic condition for it to be successful is the commitment of states which are involved in the dispute; to settle the dispute in peaceful means.

It is important to note that disputes will inevitably rise among/ between states. This study proposes 'negotiation' between/ among states to settle their disputes for the restoration and the continuation of international peace and stability. In order to provide a basis for this proposal the following methodology is used. The first part of this study examines consultation; the importance of informing and providing feedback from the other party which is likely to be affected before the problem or dispute arises. The second part deals with negotiation between/ among parties during the dispute. The next section deals with the relation and the relevance of negotiation with litigation. The final part examines the strength of the negotiation between parties mentioned

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<sup>1</sup> Hornby, A., *Oxford Advanced Learners' Dictionary of Current English*, (UK: Oxford University Press, 2000), p. 853.

<sup>2</sup> Kegley, C.W., and Wittkopf, E.R., *World Politics: Trends and Transformation*, (US: New York, Bedford/ St Martins', 2003), p. 74.

## 2. CONSULTATION

One of the basic pillars of international relations theories and thinking, realism, argues that states like individuals are greedy and selfish. States are the only actors and players in the international arena who are trying to minimize the costs and maximize their benefits. It is the concept of “zero-sum game” that dominates the relations among states. States believe that the gain of their part is the loss of the other parties and the gains of other parties are their loss. There is no room for mutual benefits at the same time. International relations is regarded to be in a state of anarchy where there is the absence of an above authority to govern and formalize the relations among sovereign states. There is a self-help system in which states can/should consult to every possible means in order to fulfill their ambitions and interests. This prevents cooperation among states. This as a result, inevitably, prepares a ground for disputes.<sup>3</sup> The presence of the “balance of power” has proven to be helpful in solving the problems among states in realist assumption. It is not the just solution or the fair resolution that has been reached through the application of the balance of power calculations, but the dictation of the norms and principles of the stronger alliance. Therefore, the disputes have not been settled in real terms, but have been postponed to another time where there would be new alliances and new power configurations.

International arena is defined as ‘anarchy’ in realist assumption which implies that there is not an above authority over states to facilitate, provide a ground or even enforce cooperation and collaboration among states. The fact that international arena is defined as ‘anarchy’ prevents the enforcement of the settlement of disputes in peaceful means. It is because of this fact that it might be argued that the emergence of international law which dates back to the 1648 Westphalia Treaty concluded to end the Thirty Years’ War sometimes is not sufficient to prevent the disputes from arising or settling because of the lack of being accompanied by a world government<sup>4</sup>. It is clear that such kind of an attitude hinders cooperation, settlement of disputes in peaceful means and as a result negotiation among states in a great amount.

In 1945, with the formation of the United Nations (UN), member states agreed to settle their disputes in peaceful means. Article 2 (3) of the UN Charter argues that states should ‘settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered’<sup>5</sup>. These peaceful means are described as ‘negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice’ by a General Assembly (GA) resolution.

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<sup>3</sup> Donnely, J., *Realism and International Relations*, (UK: Cambridge, Cambridge University Press, 2000), p.24.

<sup>4</sup> Donnely, J., *Realism and International Relations*, p. 35

<sup>5</sup> Cited in; Merrills, J. G., *International Dispute Settlement*, (UK: Cambridge, Cambridge University Press, 1998), p. 2.

It is important to note that when a state thinks that there is a possibility that another state will be effected because of one of her actions, discussions or exchange of views with the effected party will be useful in preventing the dispute from arising or solving the dispute. The stance and position of the effected party would likely to be employed in the initial decision making stage through consultation. It can be argued that the particular value of consultation is that it allows or provides useful information at the most appropriate stage; before the action taken place. Because of that it is easier to make modifications and changes in the decision making stage so that the rights and the interests of the effected party can also be taken into consideration<sup>6</sup>. However, consultation, negotiation in the initial stage before the problem occurs, should not be confused with notification or obtaining prior consent.

It should also be noted that there are no constant principles but constant interests of states in the international arena where states try to minimize costs by maximizing their benefits. The interests of states, like people, may or is likely to change by time. What a state finds beneficial to her interests may not be beneficial for her tomorrow. This complexity in the interests may likely cause a dispute with other parties even consulting and adopting the views of the effected party to her initial decision making procedure.

### 3. NEGOTIATION

Another basic pillars and one of the corner stones of international relations theories, liberalism, argues that cooperation among states is possible and desirable. It is the strength of the amount of the cooperation that brings various states together. The harmonization of interests would be helpful in the promotion of peace and prosperity among nations. Cooperation on one field would spread to other issues of areas and would result in cooperation in different fields. Cooperation on economic issues would spread to common political issues which, in turn, would open a way to cooperation on security issues. It is argued that states, like humans, are cooperative in their nature. Therefore, relations among states should provide grounds for cooperation in concluding common interests. In this context, negotiation is the basic principle that brings various parties with different interests together.

International arena is described as an interdependent atmosphere where states are dependant to each other. In liberalism, unlike realism, states are regarded as dependable to each other and should facilitate the promotion of peace and stability and cooperation to gain more for their own benefit.<sup>7</sup> States should negotiate in every stages of a dispute to settle the disputes in peaceful means.

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<sup>6</sup> Terence, H., *The Negotiation Process and the Resolution of International Conflicts*, (US: Columbia, University of Soth Carolina Press, 1996), p. 135.

<sup>7</sup> Jennifer, F., *Theories of International Cooperation and the Primacy of Anarchy*, (US: Albany, State University of New York Press, 2002), p. 72.

Negotiations among states are generally conducted or set through diplomacy. This form of negotiation through diplomacy may be carried out by respective foreign offices, diplomats, delegations or competent authorities. Such kinds of negotiations are sometimes conducted by heads of states or ministers themselves in summit meetings. It should be noted that such kind of summit meetings sometimes may embody disadvantages that there may be great expectations which may not be fulfilled.

For a context of negotiation to be successful in later stages it is important to note that satisfying the needs of one party is not enough. The result of the negotiation process should not prepare a ground for later disputes.<sup>8</sup> Cooperation among states should bear this in mind.

Moreover, for a negotiated settlement to be successful, the parties should be in the opinion that their benefits are more than the losses. It is impossible not to give concessions or sacrificing some of benefits in a cooperation context with other states. But the negotiation process should embody the ambiance and the fact that there is an equitable outcome which is beneficial to all parties concerned to be successful and not to cause further disputes.<sup>9</sup>

#### **4. NEGOTIATION VS LITIGATION**

Negotiation can be regarded as a process where the control of the evaluation, the conduct and the direction of the process is in the hands of states. It is the will and the desires of states that bring them together on the different sides of the negotiation table. By participating in negotiation process, parties have shown their willingness and intention to settle their disputes. It is the actualization of good intentions of the parties that contribute to the overall process of elimination of problems among the parties. The evolution and the progress of the process seem to be shaped by the disputed parties. The time table and the issues to be covered are determined by the parties themselves. The feeling of the acquisition of the control of the vital issues under consideration would help in the success of both the negotiation process and the period that covers the implementation of the norms and principles concluded during the interaction process.

However in litigation, issuing the dispute to the court, the control and the binding decision is taken from the control of the states. It is transferred to the litigation body. The litigation body may set a time limit for certain stages of negotiations. The decisions taken by the international courts are binding on the parties. States that have applied to the international litigation bodies have to apply the decisions of these bodies. It should not be forgotten that there remains the possibility of the presence of dissatisfaction of a party towards the outcome of the decision taken by the court. The disputed party may have

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<sup>8</sup> Burton, J., "The Resolution of Conflict", *International Studies Quarterly*, Vol. 16, 1972, p. 8.

<sup>9</sup> Burton, J., "The Resolution of Conflict", p. 14

a reason to think or believe that the litigation body has been affected in a way or another by the conflicting party or somehow is under the influence of the adversary party. In such a case, it is with no doubt that, the dispute would not be settled peacefully. The decision of the court on this issue would result in dissatisfaction of a party which, in turn, would open new areas of disputes and conflicts among parties. The particular problem that the court has been addressed to would be closed; however, it would open the door to bigger clashes and disputes among parties.

Another issue of concern in dealing with litigation is related to the international reputation of the parties. It is for sure that international litigation takes time and it is an expansive process for the parties. Moreover, once any party resorts to international litigation bodies, it may come to a meaning that this particular state has been unable to settle its disputes with the adversary on its own. Therefore, these entities have consulted to the litigation body. This includes the possibility of the presence of such a thinking that other sovereign states in the global scale would think twice or three times before conducting lucrative and strategic engagements with the parties to the dispute.

However, it should not be forgotten that issuing the case to the court is again determined by the result of the negotiations of the states involved. It is clear that courts cannot be asked to deal with cases where there is tension and likelihood of a dispute. One of the functions and uses of negotiation is even to prepare such kind of cases to be issued to the court. Negotiation here is going to be needed or will prove to be useful to clarify the disagreement concrete enough for reference to a court or tribunal.

## **5. THE STRENGTH OF NEGOTIATION**

It should be noted that the strength and enforceability of negotiation is in direct proportion of the willingness of the parties to reach a deal and cooperate<sup>10</sup>. The strength of the negotiations lies in the amount of importance that the parties have attached to it. The more states attach importance to the negotiation; the interaction process would be more successful and fruitful. If the states regard the duration of negotiation as a waste of time or to gain time in order to reach other objectives, it is likely that the whole process would fail. This would, in turn, deteriorate the possibility of other means of interaction in a great amount.

States may have a deal if they think that their gains and interests are satisfied. It is the perception and the degree of satisfaction that determines the success of the duration and the implementation of decisions taken throughout the

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<sup>10</sup> Wilkenfield, J., Young, K., Asal, V., and Quinn, D., "Mediating International Crisis", *Journal of Conflict Resolution*, Vol. 47, No. 3, 2003, p. 285.

negotiation process. States would be more willing and able to shoulder the responsibilities taken throughout the process if they think that the terms that are concluded are beneficial for them.

Neorealist assumption of international relations brings the concept of 'relative gains' and 'absolute gains' to the agenda. Neorealist assumption argues that cooperation among states is possible when states think that their gain is more than the other states being cooperated. If a state calculates that her gain is relatively more than the other party, there is a possibility of cooperation.<sup>11</sup> However, it should not be forgotten that the belief of states is shaped during the negotiation stage and it is evident that the success of the negotiation stage is directly linked to the amount of importance that the parties attach to it.

Furthermore, it is impossible to reach a conclusion or an agreement if the parties simply refuse or is unwilling to have any kind of dealing among them. It is likely that some disputes may result in disruption of diplomatic relations which may result in the use of force. However, it should not be forgotten that the termination or disruption of official diplomatic relations does not necessarily mean the elimination or removal of the all contacts among the states concerned. But it is clear that this is a clear obstacle to further negotiation basis.

It can be argued that another problem concerning or limiting the strength of negotiation arises because of the concept of non-recognition.<sup>12</sup> A party may regard, view or declare the other party as non competent to negotiate or may simply deny negotiating with that party. It is important to note that in this case diplomatic or official channels are never established. It should be remembered that even after the establishment and membership of Israel of the UN a number of Arab states did not recognize it and refused to establish diplomatic relations and thus negotiations. The refusal of Palestine Liberation Organization (PLO) by Israel also prevented further negotiations<sup>13</sup> and thus reaching fruitful solutions for both parties under discussion.

It should also be emphasized that negotiation may not provide a ground for a sense of agreement if the stance of the parties are far from each other and there is no common ground for satisfying mutual interests. Here the whole negotiation stage may not go further than 'talks about talks'<sup>14</sup>. There is a common belief that even if there is a minor chance for reaching an agreement at the end of the negotiations due to a huge gap between parties to the dispute, the parties should at least try to negotiate which may possibly build a form of bridge at least in some issues and respects.

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<sup>11</sup> Jennifer, F., *Theories of International Cooperation and the Primacy of Anarchy*, p. 85

<sup>12</sup> Merrills, J. G., *International Dispute Settlement*, p. 24.

<sup>13</sup> Merrills, J. G., *International Dispute Settlement*, p. 26.

<sup>14</sup> Merrills, J. G., *International Dispute Settlement*, p. 26.

## 6. CONCLUSION

History has witnessed many events that sovereign nation states have involved in disputes. Disputes have arisen resulting from various reasons such as territorial claims, continental shelf problems, trade disagreements, the allocation of natural resources, different political considerations, diverse cultural traditions, expansion of ideologies, etc. states have generally resorted to war in initial stages in order to overthrow the adverse party. In this case, it is generally the strong party in military terms that reach its aim of dictating its norms, principles and interests to the others. Nevertheless, it is actually clear that this has not proven to be a solution to the disputes under question. It has only postponed the problems. Once the defeated party acquires a considerable strength, it tries to push every possible means forward to gain acquire its previous position and destroy the adversary parties. The origins of the problems have never been solved and this endless vicious circle would continue to dominate world politics. A permanent, just and acceptable solution is needed for a continuous peace and prosperity among the nations.

It is a clear fact that there were disputes is now and will likely be disputes among states in the international arena. It should not be forgotten that negotiation is a form of dispute settlement fore grounded and encouraged by UN Charter at the same time. What the point this study reaches is that in the absence of a legal enforcement which directs states to negotiate it is left for states to resort this form or not. It may sometimes be impossible or ineffective to negotiate. However states are entitled to negotiate in good faith even before a dispute arises. Negotiation in this respect is regarded as one of the most useful methods of settling disputes in peaceful means. Above all it should not be forgotten that the effectiveness of this proposed method depends heavily on the willingness of the parties and the importance they attached to the negotiation process.

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